Yet it seems that, after all, it is not the ferocity of the automobile that is to be feared, but the ferocity of those who drive them. Considering that the vehicle is one that in the hands of reckless drivers spreads over the land the maimed and dead until, as one court put it, "it has belittled the cruelties of the car of Juggernaut," considering that parents who entrust such agencies in the hands of reckless minors should in all justice be liable for injuries inflicted by them, and taking into account the undoubted practical considerations in favor of the doctrine of *respondeat superior,* since it puts the financial responsibility of the owner, who can insure himself, behind the car while it is being used by a member of the family, who is likely to be financially irresponsible, it seems liability should fall on the parent. Admitting the rule to be fair, it must be created by legislative enactment, not by a judicial distortion of the principles of agency.

For a discussion of such statutes, see 19 MICH. L. REV. 333, and 6 CORNELL LAW QUART. 187, where the writers adopt opposite views as to the validity of a Michigan statute. H. A. A.

PUBLIC UTILITY RATES—STATE POWER OVER MUNICIPALITY.—Under constitutional authority, a city gave its consent to the construction of a street railway on condition, among other things, that the company enter into a contract fixing rates of fare. The company asked of the Public Service Commission an order raising the rates so fixed, on the ground that the contract rates had become unreasonable. *Held,* that while the contract rates may be binding as between the parties to the contract, they have no binding force when in conflict with rates fixed by a state commission in the manner prescribed by the statute. *City of Scranton* v. *Public Service Com.* (Pa., June, 1920), 110 Atl. 775.

It has often been suggested that power to fix rates is one of the police powers of sovereignty that is never to be presumed to be given up unless it is clear beyond doubt. 18 MICH. L. REV. 806, 19 *ib.* 112; *Richmond* v. *C. & P. Tel. Co.* (Va., 1920), 105 S. E. 127; *Hoyne* v. *Elevated Co.* (Ill., 1920), 120 N. E. 587. In *Charleston* v. *Pub. Serv. Com* (W. Va., 1920), 103 S E. 673, the court distinguishes between matters of proprietary right in which a sovereign state may permit a municipality to make an inviolable contract and those phases of police power relating to public safety, health, and morals. It has been intimated that the power to fix permanent rates may be considered to be a power which cannot be surrendered by the state *Chicago Rys. Co.* v. *Chicago,* 292 Ill. 190 (1920); *Niagara Falls* v. *Pub. Serv. Com.* (N. Y., 1920), 128 N. E. 247; *Camden* v. *Arkansas C. & P. Co.* (Ark., 1920), 224 S. W. 444. Municipalities and companies are conclusively presumed to know this when they become parties to a contract, and therefore to know "that the sovereign police power of the state to modify its terms would be supreme whenever the general well-being of the public so required," as the court puts it in the instant case. But cf. *Ottumwa Co.* v. *Ottumwa* (Ia., 1920), 178 N. W. 905. But this is a rule that should work both ways. If the state in its sovereignty can raise the rates in favor of the utility, then equally in proper case it should be able to lower contract rates in favor of the public.

If this is a sovereign power which cannot be surrendered, then the state should be able to change rates contracted for with the state itself, as well as those made by its consent by contract to which the municipality is a party. Under such a provision as that of the Constitution of Pennsylvania—"The exercise of the police power of the state shall never be abridged, or so construed as to permit corporations to conduct their business in such manner as to infringe the equal rights of individuals or the general well-being of the state"—other provisions of franchises should be subject to the same rule, and the extent of such power in the state to change franchise or contract provisions would be bounded only by the definition of police power. This seems good sense and good law, but it is capable of extension to many cases that have been treated as contract matters only, though involving matters very closely touching the "general well-being of the state." This gets entirely away from the doubtful position that a municipality in making such contracts is an agent of the state, and the state as principal may consent to a change in the contract made by the agent, even though the agent has to pay the price. There is no true contract situation of agency there. 18 MICH. L. REV. 806.

The company, it would seem, is bound by the limitations of the contract until the state consents to a change, and till then cannot charge more than the maximum rates agreed to in the franchise, even though it can operate at those rates only at a loss. The public, however, cannot compel operation at a loss. The company may quit. *Charleston-Isle of Palms Traction Co.* v. *Shealy,* 266 Fed. 406 (June, 1920). Not much has been said about the rights of a city which has consented to the use of its streets on a contract fixing fares at a certain price. But if the state may release the company from its agreement as to price, can the company insist on its right to stand on the other terms of the contract with the city? It would seem that if the city was granted the power to give or withhold its consent, it should have the power to withdraw such consent when the company no longer lives up to the terms on which it was given. It was so held in *Meridian L. & R Co.* v. *Meridian,* 265 Fed. 765 (May, 1920). In this case it seemed the city had no authority to contract as to the rates, and still the court said if the company enjoyed the privilege it must assume the burdens on which they were granted, and a court could not grant relief, though it would bring disaster on the company to refuse. The court intimated that the legislature could grant higher fares, but if the constitution gives the city control over consent to occupy the streets, how does the legislature have power to nullify the conditions on which the consent was given, and yet prevent the city from withdrawing its consent? Few cases recognize any rights in the city as against the legislative act raising rates, even though the city is bound by its part of the contract. *Pub. Serv. Com.* v. *Girton* (Ind., 1920), 128 N. E. 690; *Richmond* v. *C. & P. Tel. Co* (Va., 1920), 105 S. E. 127.

Cases continue to appear in which cities assume to fix a permanent price for service when no such power has been conferred upon them. See *Ottumwa R. & L. Co.* v. *Ottumwa* (Ia., 1920), 178 N. W. 905, which does not agree to the doctrine that a contract for a permanent rate infringes sovereignty; *Warsaw* v. *Pavilion Nat. Gas Co.,* 182 N. Y. S. 173, which holds that no con-

tract can defeat legitimate governmental authority; *People ex rel. Ry. Co.* v. *Pub. Serv. Com.*, 183 N. Y. S. 473, involving a rate in city limits for a railroad which was not a street railway.

Emergency increases in rates are justified in some cases in these troublous after-war times. *La Crosse* v *Railroad Com.* (Wis., 1920), 178 N. W. 867. The general discontent aroused by raising of rates by commissions has led some legislatures to withhold from commissions power over rates fixed by contract with a municipality. MICHIGAN ACTS 1919, 753; *Mobile v. Mobile Electric Co.* (Ala., 1920), 84 So. 816; *Richmond* v. *C. & P. Tel. Co.* (Va., 1920), 105 S. E. 127, though in New York the restriction is limited to franchises and contracts subsisting when the amendment to the act was passed. *New York City* v. *Nixon* (N. Y., 1920), 128 N. E. 245; *Niagara Falls* v. *Pub. Serv. Com., ib.* 247; *People ex rel. Garrison* v. *Nixon, ib.* 255. In most cases there is no such limitation on the power of the commission to increase rates. *Pub. Serv. Com.* v. *Girton* (Ind., 1920), 128 N. E. 690; *Hoyne* v. *Chicago & O. P. E. Co.* (Ill., 1920), 128 N. E. 587. A so-called Home Rule Charter provision in the constitution does not prevent legislative control of rates. *Detroit* v. *Mich. R. Com.* (Mich., 1920), 177 N. W. 306. This power of commissions over rates has recently been exercised more often in cases where the contracting parties were the company and the municipality, but it is equally applicable to rates fixed in a contract between a public utility and an individual. *Rutland R. L. & P. Co.* v. *Burditt Bros.* (Vt., 1920), 111 Atl. 582, citing, among others, the leading case of *Union Dry Goods Co.* v. *Ga. Pub. Serv. Corp.*, 142 S. E. 841, aff., 248 U. S. 372; *Pub. Utilities Com.* v. *Wichita R. & L. Co.*, 268 Fed. 37 (Kan., 1920); *Ohio & Colorado, etc., Co.* v. *Public Utilities Com.* (Colo., 1920), 187 Pac. 1082. E. C. G.

RIGHT OF TORT FEASOR TO INDEMNITY AND EXONERATION.—In cases where a municipality has been called upon to respond in damages because of its legal duty to keep sidewalks free from obstructions, but where the obstruction was caused by the negligence of a third person, it is clearly established by a long line of decisions that the municipality may recover against the person whose negligence was the real cause of the injury. See a review of the cases in note in L. R. A. 1916 F. 86.

These indemnity actions seem to be in the nature of quasi contractual actions, and the theory upon which they are based is much the same as that in the cases where a surety is allowed contribution from his co-sureties. That this right of contribution in suretyship cases is not based upon any true contractual relationship, either express or implied, is clearly shown by the case of *Deering* v. *Winchelsea*, 2 B. & P. 270, where it was held that the right of contribution among sureties exists even in cases where the obligations of the several sureties are evidenced by separate bonds, as well as where they are bound in the same instrument. And in *Norton* v. *Coons*, 6 N. Y. 33, it was held that the right to have contribution exists, though the sureties became such at different times and without each other's knowledge.

In the cases where a municipality brings an indemnity action against a negligent landowner, the courts do not state very clearly what the theory of